

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Bank of New York Mellon

V

17-5453

Mark Mazza,Lisa Mazza

MOTION TO VACATE PURSUANT TO FRCP 60(b)(4)

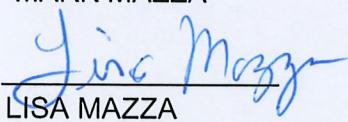
- 1 This court granted judgment/orders for ejectment on May 24,2023.
- 2 This matter was removed to federal court, .
3. The ejectment complaint sought removal of defendants from the property, with no request for a monetary sum nor was there a pecuniary amount in controversy.
- 4 Ejectment cannot be reduced to a monetary amount for purposes of amount in controversy , which did not exist for this court to have subject matter jurisdiction.
5. The requirements for diversity to support federal jurisdiction was lacking as the amount in controversy was not nor could not be met regarding this matter, failing to satisfy the requirements of 28

USC 1332.

6. Challenges to subject matter jurisdiction may be raised at any time.
7. Due to lack of jurisdiction, defendants aver the judgments/orders of May 24,2023 granting ejection
are void.
8. Defendants seek relief pursuant to FRCP 60 (b)(4), for vacating the May 24,2023 judgments/orders.

Wherfore, the defendants' request this motion be granted, *and remand the case
to state court,*


MARK MAZZA


LISA MAZZA

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MEMORANDUM OF LAW

Plaintiffs' complaint in ejectment sole request for relief was for defendants to be removed from the subject

property. Lacking within the pleading was an amount in controversy or pecuniary claim , and therfore a

claim for ejectment cannot be reduced to a monetary amount.

There is no subject matter jurisdiction, and this case failed to meet the requirements of 28 USC 1332

The amount in controversy requirement could not be met , a necessary element that was lacking so as to

result in lack of subject matter jurisdiction. The amount in controversy is determined at time of removal ,

and based on the complaint there were no monetary amount Ejectment cannot be reduced to a monetary amount for purposes of the amount in controversy, and in this case it failed to meet the above

statutory requirements.

Courts evaluate the complaint at time of removal to determine whether the amount in controversy exceeds

\$75,000. See St. Paul Mercury Indem. Co. v Red Cab Co. 303 U.S. 283, Auto Owners Ins. Co. v Stevens

and Ricci 835 F.3d 388(3d Cir. 2016) This motion is proper for filing at this time in the district court while

the appeal is pending. If this court indicates that it will grant the motion , the defendants appellants are

then required to make a motion in the appellate court for a remand of the case inorder that the district

court may grant the motion. (quoting Main Line fed. Savings and Loan Assoc. V Tri-Kell 721 Fed 904 (3d

Cir. 1983) Once remanded , the district court will have power to grant the motion , but not before. See also

F.P. Woll and Co. v Fifth and Mitchell Corp. No. CIV A 96-5973 , 2008 WL 414 8603 (E.D. Pa. 2008)

Pursuant to FRCP 60(b)(4). This court lacked subject matter jurisdiction to consider and decide this

ejectment case . The judgments /orders of ejectment entered on May 24,2023 are void and must be

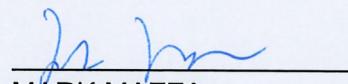
vacated by this court. Defendants claim waiver in the alternative
if plaintiff failed to contest an amount in controversy.
Wherefore, defendants request the motion be granted.

M. Mazza
MARK MAZZA
Lisa Mazza
LISA MAZZA

Certificate of Service

The attached motion was served on the below named by USPS mail on November 18 ,2024

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MARK MAZZA

District Court
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